

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
 Washington, DC 20001-2866
 Phone: 202-216-7000 | Facsimile: 202-219-8530

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. 19-1142 2. DATE DOCKETED: 07-17-2019
3. CASE NAME (lead parties only) National Association of Regulatory v. Federal Energy Regulatory Commission
4. TYPE OF CASE: ☒ Review ☐ Appeal ☐ Enforcement ☐ Complaint ☐ Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? ☐ Yes ☒ No
 If YES, cite statute _____
6. CASE INFORMATION:
 - a. Identify agency whose order is to be reviewed: Federal Energy Regulatory Commission
 - b. Give agency docket or order number(s): RM16-23-000/16-23-001 and AD16-20-000/16-20-001
 - c. Give date(s) of order(s): 2-15-2018 and 5-16-2019
 - d. Has a request for rehearing or reconsideration been filed at the agency? ☒ Yes ☐ No
 If so, when was it filed? 03-19-2018 By whom? National Association of Regulatory Utility Comp
 Has the agency acted? ☒ Yes ☐ No If so, when? 05-16-2019
 - e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
See attachment.
 - f. Are any other cases involving the same underlying agency order pending in this Court or any other?
☒ Yes ☐ No If YES, identify case name(s), docket number(s), and court(s)
This case is consolidated with American Public Power Association, et al., v. FERC, 19-11-47.
 - g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
☐ Yes ☒ No If YES, give case name(s) and number(s) of these cases and identify court/agency: _____
 - h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? ☐ Yes ☒ No If YES, provide program name and participation dates. _____

Signature /s/ Jennifer M. Murphy Date 08-16-2019

Name of Counsel for Appellant/Petitioner Jennifer M. Murphy

Address 1101 Vermont Ave., NW, Suite 200, Washington, DC 20005

E-Mail jmurphy@naruc.org Phone (202) 898-1350 Fax (202) 898-2213

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<hr/>)	
NATIONAL ASSOCIATION OF REGULATORY)	
UTILITY COMMISSIONERS, <i>ET AL.</i> ,)	
)	
	<i>Petitioners,</i>)	
)	
v.)	Nos. 19-1142 and
)	19-1147 (consol.)
FEDERAL ENERGY REGULATORY COMMISSION)	
)	
	<i>Respondent.</i>)	
<hr/>)	

DOCKETING STATEMENT ATTACHMENT

6.e. Identify the basis of appellant's/petitioner's claim of standing. See D.C.

Cir. Rule 15(c)(2):

The challenged FERC orders adversely affect petitioner's state members by allowing energy storage resources to circumvent state requirements or contract and tariff provisions governing retail electric service and distribution facilities regulated by the state members. Their injury can be remedied by a favorable ruling of this Court. The National Association of Regulatory Utility Commissioners represents the interests of State utility commissions that have the duty of regulating, *inter alia*, the regulated electric utilities within their respective borders. The association has been recognized both by Congress in several statutes and

consistently by Article III courts as the proper entity to represent the collective interests of the State utility commissions.¹

¹ See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); *See also NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir. 1994) (where this Court explains “Carriers, to get the cards, applied to . . . (NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the “bingo card” system). *See also, e.g., U.S. v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff’d* 672 F.2d 469 (5th Cir. 1982), *aff’d en banc on reh’g*, 702 F.2d 532 (5th Cir. 1983), *rev’d on other grounds*, 471 U.S. 48 (1985) (where the Supreme Court notes: “The District Court permitted . . . (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. *Compare, NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985). *See also NRC Atomic Safety and Licensing Board Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)*, Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, mimeo at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”).

Respectfully submitted,

/s/ Jennifer M. Murphy

James Bradford Ramsay

General Counsel

Jennifer M. Murphy

Dir. of Energy Policy and Sr.

Counsel

National Association of Regulatory

Utility Commissioners

1101 Vermont Ave, NW, Suite 200

Washington, DC 20005

(202) 898-1350

Dated: August 16, 2019

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<hr/>		
NATIONAL ASSOCIATION OF REGULATORY)	
UTILITY COMMISSIONERS, <i>ET AL.</i> ,)	
)	
<i>Petitioners,</i>)	
)	
v.)	Nos. 19-1142 and
)	19-1147 (consol.)
FEDERAL ENERGY REGULATORY COMMISSION)	
)	
<i>Respondent.</i>)	
<hr/>		

CERTIFICATE OF SERVICE

I hereby certify that I have filed electronically this 16th day of August, 2019, a copy of the foregoing Docketing Statement, Non-Binding Statement of Issues, and Statement Concerning Deferred Appendix with the Clerk of the Court for the United States Court of Appeals for the District of Columbia through the Court's CM/ECF system. The Court's CM/ECF system will conduct service on the following registered counsel:

Dennis Lane
M. Denyse Zosa
Stinson LLP
1775 Pennsylvania Avenue, NW, Suite
800
Washington, D.C. 20006
dennis.lane@stinson.com
denyse.zosa@stinson.com

Robert Solomon, Solicitor
Anand Viswanathan
Federal Energy Regulatory Commission
Office of the Solicitor
Room 9A-01
888 First Street, NE
Washington, DC 20426
Robert.Solomon@ferc.gov
Anand.Viswanathan@ferc.gov

Cynthia Schneider Bogorad
William S. Huang
Jeffrey Michael Bayne
Spiegel & McDiarmid LLP
1875 Eye Street, NW
Suite 700
Washington, DC 20006
cynthia.bogorad@spiegelmc.com
william.huang@spiegelmc.com
jeffrey.bayne@spiegelmc.com

Thomas Christian Orvald
NextEra Energy, Inc.
801 Pennsylvania Avenue, NW
Suite 220
Washington, DC 20004
thomas.orvald@nee.com

Daniel M. Malabonga
Midcontinent Independent System
Operator, Inc.
720 City Center Drive
Carmel, IN 46032
dmalabonga@misoenergy.org

John Nelson Moore
Natural Resources Defense Council
20 N. Wacker Drive
Suite 1600
Chicago, IL 60606
jmoore@nrdc.org

Vickie Lynn Patton
Environmental Defense Fund
2060 Broadway
Suite 300
Boulder, CO 80302
vpatton@edf.org

Kim Noelle Smaczniak
Charles Carter Hall
Earthjustice
1625 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036-2212
ksmaczniak@earthjustice.org
chall@earthjustice.org

James Carl Holsclaw
The Holsclaw Group, LLC
303 E. Main Street
Plainfield, IN 46168
jim@thglaw.com

Jennifer L. Key
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
jkey@steptoe.com

Alexa Mullarky
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
alexa.j.mullarky@sce.com

Jeffery Scott Dennis
Advanced Energy Economy
1000 Vermont Avenue, NW
Suite 300
Washington, DC 20005
jdennis@jenner.com

Randall S. Rich
Pierce Atwood, LLP
1875 K Street, NW
Suite 700
Washington, DC 20006
rrich@pierceatwood.com

Gary Greenstein
Wilson Sonsini Goodrich & Rosati,
PC
1700 K Street, NW
Fifth Floor
Washington, DC 20006-3817
ggreenstein@wsgr.com

/s/ Jennifer M. Murphy

Jennifer M. Murphy